

No. 15740 ✓

---

United States  
Court of Appeals  
for the Ninth Circuit

---

JACQUES ARTHUR GUBBELS,  
Appellant,

vs.

ALBERT DEL GUERCIO, as District Director,  
Immigration and Naturalization Service, Los  
Angeles, California,  
Appellee.

---

Transcript of Record

---

Appeal from the United States District Court for the  
Southern District of California,  
Central Division.

FILED

DEC 11 1957



No. 15740

---

United States  
Court of Appeals  
for the Ninth Circuit

---

JACQUES ARTHUR GUBBELS,

Appellant,

vs.

ALBERT DEL GUERCIO, as District Director,  
Immigration and Naturalization Service, Los  
Angeles, California,

Appellee.

---

Transcript of Record

---

Appeal from the United States District Court for the  
Southern District of California,  
Central Division.

1872

1872

1872

1872

1872

1872

## INDEX

---

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Answer .....	7
Attorneys, Names and Addresses of.....	1
Certificate of Clerk.....	23
Complaint .....	3
Findings of Fact, Conclusions of Law and Judgment .....	17
Memorandum of Decision.....	12
Notice of Appeal.....	22
PreTrial Order, Plaintiff's Proposed.....	8
Statement of Points Upon Which Appellant Relies .....	26
Stipulation Re Exhibits.....	22



## NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

ARTHUR J. PHELAN,  
220 Bush Street,  
San Francisco 4, California;

MARSHALL E. KIDDER,  
448 South Hill Street,  
Los Angeles 13, California.

For Appellee:

LAUGHLIN E. WATERS,  
United States Attorney;

ARLINE MARTIN,  
Assistant U. S. Attorney;  
600 Federal Building,  
Los Angeles 12, California.





In the United States District Court In and for the  
Southern District of California, Central Division

No. 20481—WM

JACQUES ARTHUR GUBBELS,

Plaintiff,

vs.

ALBERT DEL GUERCIO, as District Director,  
Immigration and Naturalization Service, Los  
Angeles, California,

Defendant.

## COMPLAINT FOR JUDICIAL REVIEW

Plaintiff, Jacques Arthur Gubbels, complains of  
the defendant and for cause of action alleges:

### I.

This complaint is filed and these proceedings are  
instituted against the defendant pursuant to Title  
28, U.S.C.A., Section 2201 and Title 5, U.S.C.A.,  
Section 1009, for a judgment declaring that plain-  
tiff is not deportable from the United States.

### II.

Plaintiff is detained at the Federal Correctional  
Institution, Terminal Island, San Pedro, California,  
within the jurisdiction of this Court. [2\*]

### III.

The defendant, Albert Del Guercio, is the duly ap-  
pointed, qualified and acting District Director of the

---

\*Page numbering appearing at foot of page of original Certified  
Transcript of Record.

Immigration and Naturalization Service, Department of Justice, Los Angeles, California; that Francis Quebodeaux, Special Inquiry Officer, Immigration and Naturalization Service, Los Angeles District, and the members of the Board of Immigration Appeals, Washington, D. C., are, and at all times herein complained of were, executive officials within the Department of Justice.

#### IV.

The plaintiff is a native of Belgium, citizen of The Netherlands, 21 years of age, who was lawfully admitted to the United States for permanent residence on February 3, 1948, at New York, New York, and who has resided continuously in the United States since that time; that he last arrived in the United States at an unknown port on or about October, 1954, as a member of the Armed Forces of the United States.

#### V.

On or about October 4, 1955, there was served upon the plaintiff a warrant of arrest issued by the Immigration and Naturalization Service directing that plaintiff be taken into custody and granted a hearing to show cause why he should not be deported from the United States; that pursuant to such warrant, a hearing was accorded the plaintiff by Francis Quebodeaux, Special Inquiry Officer at San Pedro, California, on November 29, 1955; that on the same day, the said Special Inquiry Officer, Francis Quebodeaux, after making findings of fact and conclusions of law, ordered that plaintiff be de-

ported from the United States on the following ground, to wit:

“That the respondent is subject to deportation under Section 241(a)(4) of the Immigration and Nationality Act, in [3] that he at any time after entry, had been convicted of two crimes involving moral turpitude not arising out of a single scheme of criminal misconduct, to wit: steal and violation of the Uniform Code of Military Justice, Article 121, and by means of force and violence, steal in violation of the Uniform Code of Military Justice, Article 122.”

## VI.

On or about June 12, 1956, the Board of Immigration Appeals dismissed the plaintiff's appeal from the aforesaid order of the Special Inquiry Officer, Francis Quebodeaux, dated November 29, 1955.

## VII.

The administrative officials have committed errors of law in applying the deportation statute to the facts of the plaintiff's case, and such deportation proceedings were unfair and constitute a denial of due process of law, and there is no reliable, probative and substantial evidence in the deportation record sustaining the charge upon which plaintiff has been ordered deported, for the following reasons, among others:

1. The court-martial judgment, made in Germany on or about September 13, 1954, which is the basis for the deportation charge, is not a “convic-

tion" within the meaning of Section 241(a)(4) of the Immigration and Nationality Act of 1952.

2. The offenses covered by the said court-martial judgment do not involve moral turpitude.

3. The evidence does not establish that the offenses covered by the court-martial judgment [4] did not arise out of a "single scheme of criminal misconduct," as required by Section 241(a)(4) of the Immigration and Nationality Act of 1952.

### VIII.

Plaintiff is informed and believes and therefore alleges that, unless the defendant is restrained from so doing, he will assume custody over the plaintiff on or about September 29, 1956, for the sole purpose of effecting plaintiff's deportation to The Netherlands.

Wherefore, plaintiff prays that the Court review the record of his deportation proceedings and enter judgment that he is not deportable from the United States on the charge contained in the order of deportation and that, pending such review, the Court enjoin and restrain the defendant from proceeding with the deportation of plaintiff.

ARTHUR J. PHELAN &  
MARSHALL E. KIDDER,  
Attorneys for Plaintiff,

By /s/ MARSHALL E. KIDDER.

Dated: September 18, 1956.

[Endorsed]: Filed September 19, 1956.



[Title of District Court and Cause.]

ANSWER

Comes now the defendant herein, and in answer to the complaint on file herein, admits, denies and alleges as follows:

I.

Referring to the allegations contained in paragraph I of plaintiff's complaint, neither admits nor denies said allegations, the same being conclusions of law.

II.

Referring to the allegations contained in paragraphs II, VII and VIII, denies said allegations; and with further reference to paragraph II, alleges that the plaintiff is now at liberty on bond.

III.

Referring to the allegations contained in paragraphs III, [6] IV, V and VI, admits said allegations.

Wherefore, defendant prays that plaintiffs take nothing by reason of the complaint herein, that the Court enter an order determining the validity of the Deportation Order herein to be reviewed, for costs and for such other and further relief as to the Court seems proper.

LAUGHLIN E. WATERS,  
United States Attorney;

MAX F. DEUTZ,  
Assistant United States Attorney, Chief of Civil  
Division;

ARLINE MARTIN,  
Assistant United States  
Attorney;

/s/ ARLINE MARTIN,  
Attorneys for Defendant.

Affidavit of service by mail attached.

[Endorsed]: Filed October 22, 1956. [7]

---

[Title of District Court and Cause.]

PLAINTIFF'S PROPOSED  
PRETRIAL ORDER

At a conference held under Rule 16, F.R.C.P., by direction of William M. Byrne, Judge, the following admissions and agreements of fact were made by the parties and require no proof:

(1) Plaintiff, Jacques Arthur Gubbels, is a native of Belgium, citizen of The Netherlands, born March 4, 1935, who was lawfully admitted to the United States for permanent residence at New York, N. Y., on February 3, 1948.

(2) Plaintiff enlisted in the United States Army when 17 years of age, and during the course of such service was sent to and stationed in Germany.

(3) On or about September 13, 1954, in Germany, he was convicted by general court-martial of violation of Article 121 of the Uniform Code of Military Justice, under a specification charging

that [9] did, at Rohrbach, Germany, on or about March 16, 1954, steal a pistol, caliber .45, of a value of more than \$50.00, the property of the United States, and also convicted of a violation of Article 122 of the Uniform Code of Military Justice, pursuant to a specification charging that at Landshut, Germany, on or about August 2, 1954, by means of force and violence, steal from the person of J. R., against his will, an automobile of a value of more than \$50.00.

(4) On or about November 29, 1955, following the completion of a deportation hearing accorded plaintiff, the Special Inquiry Officer of the Immigration and Naturalization Service made the following Conclusion of Law and Order:

“Conclusion of Law

“Upon the basis of the foregoing findings of fact, it is concluded:

“(1) That the respondent is subject to deportation under Section 241(a)(4) of the Immigration and Nationality Act, in that he at any time after entry, had been convicted of two crimes involving moral turpitude not arising out of a single scheme of criminal misconduct, to wit: steal and violation of the Uniform Code of Military Justice, Article 121, and by means of force and violence, steal in violation of the Uniform Code of Military Justice, Article 122.

“Order: It is ordered that the alien be deported from the United States, in the manner provided by

law, on the charge contained in the warrant of arrest."

(5) On or about June 12, 1956, the Board of Immigration Appeals ordered that the appeal of plaintiff from the decision of the Special Inquiry Officer be dismissed.

### Issues of Fact to Be Tried

There are no issues of fact to be tried. [10]

### Issues of Law

(1) Is a conviction by court-martial sufficient to sustain a deportation charge under Section 241(a) (4) of the Immigration and Nationality Act (8 U.S.C.A. 1251(a)(4)) providing for the deportation of aliens who are convicted of crimes involving moral turpitude?

(2) Does a violation of Article 121 of the Uniform Code of Military Justice involve moral turpitude?

(3) Is there reasonable, substantial and probative evidence that the offenses committed by the plaintiff did not arise "out of a single scheme of criminal misconduct," one of the elements of the deportation charge?

The foregoing admissions of fact have been made by the parties in open court at the pretrial conference; and issues of fact and law being thereupon stated and agreed to, the court makes this Order



which shall govern the course of the trial unless modified to prevent manifest injustice.

Dated: March 11, 1957.

/s/ WM. E. BYRNE,  
Judge of the U. S. District  
Court.

The foregoing pretrial order is hereby approved:

LAUGHLIN E. WATERS,  
United States Attorney;

MAX F. DEUTZ,  
Ass't U. S. Attorney,  
Chief of Civil Division;

ARLINE MARTIN,  
Ass't. U. S. Attorney,  
Attorneys for Defendant,

By /s/ ARLINE MARTIN.

ARTHUR J. PHELAN, and  
MARSHALL E. KIDDER,  
Attorneys for Plaintiff,

By /s/ MARSHALL E. KIDDER.

[Endorsed]: Filed March 11, 1957. [11]

[Title of District Court and Cause.]

## MEMORANDUM OF DECISION

Gubbels seeks judicial review of a final administrative order directing his deportation on the charge that he is an alien who, after entry, has been convicted of two crimes involving moral turpitude not arising out of a single scheme of criminal misconduct.<sup>1</sup>

The plaintiff Gubbels is a native of Belgium, a citizen of The Netherlands, born March 4, 1935, who last entered the United States at the port of New York, on February 3, 1948. He was admitted for permanent residence as a quota immigrant and has resided here continuously since such entry, except for absence abroad while in the service of the armed forces of the United States.

In 1952 plaintiff enlisted in the United States Army. On September 13, 1954, while serving in the army and stationed in Germany he was convicted in a general court-martial of violation of Article 121 of

---

<sup>1</sup>Section 241(a)(4) of the Immigration and Nationality Act of 1952 (8 U.S.C. 1251(a)(4)),

“(a) Any alien in the United States [including an alien crewman] shall, upon the order of the Attorney General, be deported who \* \* \*

“(4) \* \* \* at any time after entry is convicted of two crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefor and regardless of whether the convictions were in a single trial;” [12]

the Uniform Code of Military Justice, in that he did at Rohrbach, Germany, on or about March 16, 1954, steal a pistol, caliber .45, of a value of more than \$50.00, the property of the United States. At the same court-martial he was charged and convicted of a second offense, viz., violation of Article 122 of the Uniform Code of Military Justice, in that at Landshut, Germany, on or about August 2, 1954, by means of force and violence, he did steal from the person of J. R., against his will, an automobile of a value of more than \$50.00. He was sentenced to confinement at hard labor for five years and dishonorable discharge. Following incarceration in the Federal Correctional Institution at Terminal Island, California, he was paroled on September 29, 1956.

The basic question for decision is whether a conviction by a military tribunal is a "conviction" within the meaning of § 241(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1251(a)(4)). The question has never been decided in any reported case. It was present in *United States ex rel. Parenti vs. Martineau*, 50 F. 2d 902 (D.C.D. Conn.), but the court found it unnecessary to decide the point, and rested its decision on other grounds.

To support his contention that Congress did not intend that court-martial convictions should be included within the meaning of "convictions" as used in § 241(a)(4), Gubbels points to the distinctions between military tribunals and civil courts with particular emphasis on the right to jury trial in a civil

court. Most of these distinctions are real, but [13] they do not aid in the resolution of this problem. The distinctions were well known to Congress and had it desired to write them into the Act it would have done so. No distinction was made between "convictions" in jury trial and "convictions" in court trial, just as no distinction was made with respect to "convictions" in federal, state, territorial and military courts.

Although military tribunals form no part of the judicial system of the United States, they possess the same full, complete and plenary power over offenses committed within their jurisdiction as the civil courts of the country do in theirs. Mr. Justice Harlan, speaking for the Court in *Grafton vs. United States*, 206 U.S. 333, 345, stated: "It is alike indisputable that if a court-martial has jurisdiction to try an officer or soldier for a crime, its judgment will be accorded the finality and conclusiveness as to the issues involved which attend the judgments of a civil court in a case of which it may legally take cognizance."

In the *Grafton* case, *Grafton*, a private in the Army of the United States, was convicted of homicide in a civil court of the Philippine Islands. He had previously been acquitted of an offense based upon the same acts when tried before a general court-martial. The *Grafton* court held that "the same act constituting a crime against the United States cannot, after the acquittal or conviction of



the accused in a court of competent jurisdiction, be made the basis of a second trial of the accused for that crime in the same or in another court, civil or military, of the same government."

To assert that a conviction by court-martial which is a bar to prosecution in the civil courts is not a "conviction" within the meaning of §241(a)(4) is untenable. Congress has [14] chosen to confer upon courts-martial authority to try an officer or soldier for any crime committed by him in the territory in which he is serving. In most instances this jurisdiction is concurrent with that of the civil courts and a prosecution by court-martial is a bar to prosecution in the civil courts. While the Constitutional rule against double jeopardy is not infringed by prosecution and punishment in both the Federal and state courts, as they are distinct offenses (*Herbert v. Louisiana*, 272 U. S. 312, 47 S. Ct. 103, 71 L. Ed. 270), most states have adopted statutes similar to California Penal Code §793, which provides: "When an act charged as a public offense is within the jurisdiction of another state or country, as well as of this state, a conviction or acquittal thereof in the former is a bar to the prosecution or indictment therefor in this state." Construing a statute similar to California Penal Code §793, the Criminal Court of Appeals of Oklahoma in *State v. Mills*, 82 Okla. Cr. 282, 163 P. 2d 558, rejected the argument that a court-martial is not a court within the meaning of the statute and held that where one is charged and tried by court-martial

it is a bar to another prosecution in the state courts. It would produce an incongruity to hold that Congress intended that a "conviction" within the meaning of §241(a)(4) would depend upon which court first took hold of the case.

Deportation is a drastic measure and in construing a statute with several possible meanings we should select the one most generous to the alien (*Fong Haw Tan v. Phelan*, 333 U. S. 6, 68 S. Ct. 374; 92 L. Ed. 433), but where a fair reading of the statute leaves it unambiguous, it is the duty of the court to give coherence to what Congress intended. Congress made no distinction between convictions in civil courts [15] and military courts and intended none.

It is clear that the two offenses did not arise "out of a single scheme of criminal misconduct." The first offense was the theft of a pistol from the United States Government at Rohrbach, Germany, March 15, 1954. Five months later, on August 2, 1954, at Landshut, Germany, the alien stole an automobile from an individual by means of force and violence. There was no connection between the two offenses, both of which involved moral turpitude. See *U. S. ex rel. Parenti v. Mortineau*, 50 F. 2d 902 (D. C. D. Conn.); *Bartos v. United States*, 19 F. 2d 722 (CCA 8).

Judgment will be for the defendant whose counsel is directed to prepare, serve and lodge findings and judgment in accordance with local Rule 7.

June 12, 1957.

/s/ WM. M. BYRNE,

United States District Judge.

[Endorsed]: Filed June 12, 1957. [16]

---

United States District Court for the Southern  
District of California, Central Division

Civil No. 20481-WB

JACQUES ARTHUR GUBBELS,

Plaintiff,

vs.

ALBERT DEL GUERCIO, as District Director,  
Immigration and Naturalization Service, Los  
Angeles, California,

Defendant.

FINDINGS OF FACT, CONCLUSIONS OF  
LAW, AND JUDGMENT

The above matter having come on for trial on Monday, April 22, 1957, at 2 o'clock p.m., before the Honorable William M. Byrne, United States District Judge, plaintiff appearing by his attorneys, Arthur J. Phelan and Marshall E. Kidder, defendant appearing by his attorneys, Laughlin E. Waters, United States Attorney, Richard A. Lavine and Arline Martin, Assistants United States Attorney, and a certified copy of the Immigration and Naturalization proceedings having been introduced

into evidence as Defendant's Exhibit A for review by the Court, and the matter having been argued both orally and upon written memoranda, and having been submitted to the Court for decision, and the Court being fully advised and having heretofore, on June 12, 1957, filed its Memorandum of Decision, [17] makes the following Findings of Fact, Conclusions of Law, and Judgment:

### Findings of Fact

#### I.

Jurisdiction is invoked for declaratory judgment of review of a final deportation order under the provisions of Title 28, U.S.C. §2201, and Title 5, U.S.C. § 1009.

#### II.

The defendant, Albert Del Guercio, is the duly appointed, qualified and acting District Director of the Immigration and Naturalization Service, Department of Justice, at Los Angeles, California.

#### III.

The plaintiff is a native of Belgium, a citizen of The Netherlands, and a resident of the County of Los Angeles, State of California, within the jurisdiction of this Court.

#### IV.

The plaintiff last entered the United States on or about October, 1954, and was lawfully admitted to the United States for permanent residence on February 3, 1948, at New York, New York.



## V.

On or about September 13, 1954, in Germany, plaintiff was convicted by general court-martial of violation of Article 121 of the Uniform Code of Military Justice under a specification charging that he did, at Rohrnbach, Germany, on or about March 16, 1954, steal a pistol, caliber .45, of a value of more than \$50.00, the property of the United States, and was also convicted by a general court-martial of a violation of Article 122 of the Uniform Code of Military Justice, pursuant to a specification charging that at Landshut, Germany, on or about August 2, 1954, by means of force and violence, he did steal from the person of J.R., against [18] his will, an automobile of a value of more than \$50.00. Plaintiff was accorded hearings in deportation by the Immigration and Naturalization Service, and following the completion of said deportation hearings, and on or about November 29, 1955, the Special Inquiry Officer made the following conclusions of law and order:

## Conclusions of Law

Upon the basis of the foregoing findings of fact, it is concluded:

(1) That the respondent is subject to deportation under Section 241(a)(4) of the Immigration and Nationality Act, in that he at any time after entry, had been convicted of two crimes involving moral turpitude not arising out of a single scheme of criminal misconduct, to wit: Steal and violation

of the Uniform Code of Military Justice, Article 121, and by means of force and violence, steal in violation of the Uniform Code of Military Justice, Article 122.

Order: It is ordered that the alien be deported from the United States, in the manner provided by law, on the charge contained in the warrant of arrest."

## VI.

On or about June 12, 1956, the Board of Immigration Appeals ordered that the appeal of plaintiff from the decision of the Special Inquiry Officer be dismissed, and said order of deportation became final.

## Conclusions of Law

### I.

Plaintiff was accorded due process in all of the proceedings by the Immigration and Naturalization Service and in its findings and order of deportation, and said findings and order of deportation [19] are supported by reasonable, substantial and probative evidence and were according to law, and are affirmed, and judgment should be entered accordingly.

### II.

The two convictions above found by general court-martial were convictions within the meaning of Section 241(a)(4) of the Immigration and Nationality Act [8 U.S.C. 1251(a)(4)].

III.

Each of the two offenses of which plaintiff was convicted by general court-martial involved moral turpitude.

IV.

The two offenses of which the plaintiff was convicted by general court-martial did not arise out of a single scheme of criminal misconduct within the meaning of Section 241(a)(4) of the Immigration and Nationality Act [8 U.S.C. 1251(a)(4)].

Judgment

In accordance with the foregoing Findings of Fact and Conclusions of Law,

It Is Ordered, Adjudged and Decreed that the final order of deportation of the plaintiff herein by the Immigration and Naturalization Service is a valid order, and the injunction and other relief prayed for by the plaintiff is hereby denied, with costs to the defendant in the sum of \$20.00 as and for a docket fee, pursuant to 28 U.S.C. §1923.

Dated: July 3, 1957.

/s/ WM. M. BYRNE,

United States District Judge.

Affidavit of service by mail attached.

Lodged June 21, 1957.

[Endorsed]: Filed and entered July 3, 1957. [20]

[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice Is Hereby Given that Jacques Arthur Gubbels, plaintiff herein, does hereby appeal to the United States Court of Appeals for the Ninth Circuit from the judgment in the above-entitled action against plaintiff and in favor of defendant which said judgment was entered in this action on July 3, 1957.

ARTHUR J. PHELAN and  
MARSHALL E. KIDDER,  
Attorneys for Plaintiff,

By /s/ MARSHALL E. KIDDER.

Receipt of copy acknowledged.

[Endorsed]: Filed August 27, 1957. [22]

---

[Title of District Court and Cause.]

### STIPULATION REGARDING ORIGINAL EXHIBITS

It Is Hereby Stipulated by and between the parties hereto through their respective counsel, that the original exhibits introduced at the trial of the action, may be considered in their original form by the United States Court of Appeals for the Ninth Circuit in connection with the pending appeal and need not be printed.



Dated this 7th day of October, 1957.

LAUGHLIN E. WATERS,  
United States Attorney;

RICHARD A. LAVINE,  
Assistant U. S. Attorney,  
Chief Civil Division;

ARLINE MARTIN,  
Assistant U. S. Attorney,  
Assistant Chief of Civil Div.;

By /s/ ARLINE MARTIN.

ARTHUR J. PHELAN and  
MARSHALL E. KIDDER,  
Attorneys for Plaintiff,

By /s/ MARSHALL E. KIDDER.

[Endorsed]: Filed October 7, 1957. [27]

---

[Title of District Court and Cause.]

CERTIFICATE BY CLERK

I, John A. Childress, Clerk of the above-entitled Court, hereby certify that the items listed below constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit in the above-entitled matter:

A. The foregoing pages numbered 1 to 27, inclusive, containing the original:

Complaint.

Answer.

Plaintiff's Proposed Pretrial Order.

Memorandum of Decision.

Findings of Fact, Conclusions of Law and Judgment.

Notice of Appeal.

Designation of Contents of Record on Appeal.

Stipulation Regarding Original Exhibits.

B. Defendant's Exhibit "A."

I further certify that my fee for preparing the foregoing record, amounting to \$1.60, has been paid by appellant.

Witness my hand and the seal of said District Court, this 7th day of October, 1957.

**JOHN A. CHILDRESS,**

Clerk;

[Seal] By /s/ **WM. A. WHITE,**

Deputy Clerk.

[Endorsed]: No. 15740. United States Court of Appeals for the Ninth Circuit. Jacques Arthur Gubbels, Appellant, vs. Albert Del Guercio, as District Director, Immigration and Naturalization Service, Los Angeles, California, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed October 9, 1957.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for  
the Ninth Circuit.

In the United States Court of Appeals  
for the Ninth Circuit

No. 15740

JACQUES ARTHUR GUBBELS,

Appellant,

vs.

ALBERT DEL GUERCIO, as District Director,  
Immigration and Naturalization Service, Los  
Angeles, California,

Appellee.

STATEMENT OF POINTS UPON WHICH  
APPELLANT RELIES

Jacques Arthur Gubbels, as appellant herein, presents herewith the following statement of points upon which he intends to rely on appeal.

The District Court erred in concluding as a matter of law that:

1. The findings and order of deportation are supported by reasonable, substantial and probative evidence.
2. The two convictions found by general court-martial were "convictions" within the meaning of Sec. 241(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1251(a)(4)).
3. Each of the two offenses of which appellant was convicted by general court-martial involved moral turpitude.



4. The two offenses of which the appellant was convicted by general court-martial did not arise out of a single scheme of criminal misconduct within the meaning of Sec. 241(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1251(a)(4)).

5. The appellee is entitled to judgment and costs.

ARTHUR J. PHELAN and  
MARSHALL E. KIDDER,  
Attorneys for Appellant,

By /s/ MARSHALL E. KIDDER.

Receipt of copy acknowledged.

[Endorsed]: Filed October 10, 1957.

Dated: October 7, 1957.

